

IN THE COURT OF THE MUNSIFF, KOYILANDY
Present:- Miss. Raveena Naz, Munsiff, Koyilandy
Wednesday, the 24th day of September, 2025
ORIGINAL SUIT No. 03/2021

Between:

Ramesh, S/o. Sankaranarayanan, Aged 50 years,
Kalathinkal Veedu, PO Kolakkatt Chalil, Vallikkunnu
Village, Chelambra(Via), Thirurangadi Taluk,
Malappuram District.

} Plaintiff

And:

- 1 Vipin, S/o. Bhaskaran Nair, Aged 37 years, Sarovaram
Veedu, PO Kariyathankavu, Sivapuram Village,
Thamarassery Taluk.
- 2 Satheesan, Secretary, Unnikulam Grama Panchayath,
Balussery, Kozhikode.
- 3 Grama Panchayath, Represented by Secretary,
Unnikulam Grama Panchayath, Balussery, Kozhikode.

} Defendants

This suit coming on this the 26th day of August, 2025 for final hearing before me in the presence of Sri. P. M. Mohandas Sri, Asheem. K and Sri. Khaleel O.P, Advocates for Plaintiff and Sri. Vinod Singh Cheriyan, Sri. R.N Ranjith, T.M. Khalid and Smt. Saranya.O, Advocates for Defendant Nos. 1 & 3 and Defendant No. 2 *ex parte* and having stood over to this day for consideration and the Court delivered the following:

JUDGMENT

The suit is seeking reliefs of permanent prohibitory injunction and mandatory injunction.

2. The plaint averments, in brief, are as follows: The 1st Defendant is the brother of the Plaintiff's wife. The plaint schedule property was purchased

by the 1st Defendant by document No. 1959/2009 of Sub Registrar's Office, Balussery. The 1st Defendant and his family had requested the Plaintiff for financial assistance to purchase a property for constructing a house and the Plaintiff was made to believe that the Plaintiff as well as the 1st Defendant will have interest over the plaint schedule property. The Plaintiff believing the words of his wife the 1st Defendant and his mother in law gave an amount of Rs. 10,00,000/- (Rupees Ten Lakh only) at two instances to the 1st Defendant for purchasing the plaint schedule property and to construct a house thereupon. Accordingly, the plaint schedule property was purchased in 2009 and a house was constructed thereupon. When the Plaintiff enquired about his share in the plaint schedule property, the 1st Defendant and his family intimated the Plaintiff on 03.02.2019 that the Plaintiff is having no right or interest over the plaint schedule property. The Plaintiff has come to know that the 1st Defendant and his family misrepresented that the plaint schedule property will be purchased in favour of the Plaintiff and the 1st Defendant, and had purchased the property in the name of the 1st Defendant alone. The Plaintiff is entitled to half share over the property. OP 781/2019 has been filed by the Plaintiff against his wife, his mother in law and the 1st Defendant herein. As per order in IA 843/2019 in OP 781/2019, the plaint schedule property is attached by the Order of the Family Court, Kozhikode. Violating the above mentioned Order of attachment, the 1st

Defendant obtained permission for additional construction in the plaint schedule property, and had also constructed compound wall. The construction made by the 1st Defendant in the plaint schedule property is violating the building Rules and the compound wall was constructed encroaching into public property. The Plaintiff seeks for an Order of permanent prohibitory injunction restraining the 1st Defendant from continuing the unauthorized construction in the plaint schedule property and for a decree of mandatory injunction directing the 1st Defendant to remove the unauthorized construction violating the building Rules. Hence the suit.

3. Summons was served on the 1st Defendant. The 1st Defendant filed written statement contending as follows: The 1st Defendant admits that the plaint schedule property was purchased by him and is in his absolute possession and ownership. Neither the 1st Defendant nor his family had made the Plaintiff to believe that the plaint schedule property will be purchased in the name of the Plaintiff and the 1st Defendant. No amount was given by the Plaintiff to the 1st Defendant either for purchasing the plaint schedule property or for constructing a house thereupon. The averment in the plaint that only on 03.02.2014, the Plaintiff has come to know that the plaint schedule property was purchased in the name of the 1st Defendant alone is false and denied. Since the registration of the plaint schedule property, the Plaintiff was aware of the fact that the property is

purchased in the name of the 1st Defendant. The Plaintiff has no right or interest over the plaint schedule property. The Order attaching the plaint schedule property was an *ex parte* Order obtained by the Plaintiff herein. No notice directing the 1st Defendant to stop the construction in the plaint schedule property is received by the 1st Defendant. The Plaintiff is unnecessarily causing hardship to the 1st Defendant. The 1st Defendant had not violated any building Rules while making additional construction in the house or construction of the compound wall. The 1st Defendant purchased the plaint schedule property using his savings from his employment as accountant at the office of Malabar Gold, and the chitty prize amount from K.S.F.E, Balussery Branch. The 1st Defendant later shifted his employment to Malabar Gold Dubai and obtained a loan from SBI, Main Branch Kozhikode, for constructing a house. The 1st Defendant also obtained permit for construction of the house in the plaint schedule property from Unnikulam Panchayat. The 1st Defendant along with his family started residing in the house in the plaint schedule property in December 2010 itself. The construction of the house in the plaint schedule property was completed only in January, 2013. For renovation and extension works of the house in the plaint schedule property, the 1st Defendant filed application before Unnikulam Panchayat. As the Panchayat raised objection stating that the plaint schedule property is included in wet land, and also for the reason that as the Plaintiff had

obtained an *ex parte* order of attachment over the plaint schedule property RDO, Kozhikode had intimated the 1st Defendant that the RDO cannot change the nature of the property due to the order of attachment against which the 1st Defendant approached the Hon'ble High Court of Kerala and filed writ petition WP(C) No. 5081/2023. The wife of the Plaintiff and the mother of the 1st Defendant is living in the house in the plaint schedule property. The 1st Defendant felt the immediate need for construction a compound wall and purchased 2 cents of property from Smt. Girija on 20.11.2020 and had constructed a compound wall.

4. The Plaintiff is the husband of the 1st Defendant's sister. The Plaintiff and his wife are living apart since February, 2019. Divorce proceedings and proceedings under the Protection of Women from Domestic Violence Act are pending between the Plaintiff and his wife. The Plaintiff has not returned 40 sovereigns of gold belonging to the sister of the 1st Defendant. No amount was given to the 1st Defendant or his family by the Plaintiff. The attempt of the Plaintiff is to unnecessarily harass the 1st Defendant and his family. The suit is to be dismissed with costs to the 1st Defendant.
5. Defendant Nos. 2 and 3 filed written statement contending as follows: The suit is bad for non-joinder of necessary party. The Defendants are unaware of the transaction between the Plaintiff and the 1st Defendant. No property is within the jurisdiction of Defendant Nos. 2 and 3 which belongs

to the 1st Defendant. On enquiry made by Defendant Nos. 2 and 3 regarding the plaint schedule property, it has come to know that the Plaintiff is having no interest over the plaint schedule property. The suit is to be dismissed against the Defendants with costs.

6. Upon rival contentions, the following issues arose for consideration:

1. Is the Plaintiff entitled for a decree of permanent prohibitory injunction restraining the 1st Defendant from carrying out construction in the plaint schedule property?
2. Is the Plaintiff entitled for a decree of mandatory injunction directing the 1st Defendant to remove the unauthorized construction in plaint schedule property?
3. What shall be the order as to costs?

7. The Plaintiff mounted the witness box, was examined in chief as PW1, and Exts. A1 to A4 were marked. Exts. A5 and A6 were marked subject to the examination of the issuer of the document. As no steps had been taken to examine the issuer of the documents, Exts. A5 and A6 are not considered in evidence. The report and sketch filed by the Advocate Commissioner and plans filed by engineer is marked as Exts. C1, C1(a) and Ext. C1(b) respectively. The Advocate Commissioner who had filed Ext. C1 and the engineer who had filed Ext. C1(b) series were examined from the side of the Plaintiff as PW2 and PW3, respectively

8. PW1 was examined in chief on 06.03.2025. PW1 reiterated the averments in his plaint. On the said date, the counsel for the Defendants were not ready to cross-examine PW1. The learned counsel for the Defendants

were also not ready to cross-examine PW1 on 13.03.2025. The evidence of the Plaintiff was closed on 23.05.2025 and the case was posted for evidence of Defendants. As per Order in IA 21/2025, the evidence of Plaintiff was reopened and PW1 was recalled as per Order in IA 22/2025 dated 11.06.2025. Since 11.06.2025, nine opportunities were given for PW1 to appear before the Court for cross-examination. The oral evidence is complete only on cross-examination. As PW1 had willfully evaded from cross-examination, the unchallenged oral testimony of PW1 cannot be considered.

9. Heard.

10. **Issue Nos. 1 and 2**

As admitted by the Plaintiff and the 1st Defendant, the Plaintiff's wife is the sister of the 1st Defendant. It is also evident from the pleadings that there are matrimonial disputes between the Plaintiff and his wife, who is the sister of the 1st Defendant and that the plaint schedule property is attached by the Order of Hon'ble Family Court, Kozhikode. The Plaintiff avers that the 1st Defendant and his family persuaded him to meet part of the expenditure for purchasing plaint schedule property and for constructing a house thereupon and accordingly, he had given the 1st Defendant an amount of Rs. 10,00,000/- (Rupees Ten Lakh only) at two instances. It is averred in the plaint that the Plaintiff has come to know that he has no interest in the property only on 19.02.2019 which is denied by

the 1st Defendant.

11. The reliefs sought for by the Plaintiff is for a decree of mandatory injunction directing the 1st Defendant to stop any construction in the plaint schedule property and for a decree of mandatory injunction directing the 1st Defendant to remove the construction, unauthorizedly made by him. It is specifically stated in the plaint that the Plaintiff is not seeking any relief against Defendant Nos. 2 and 3. Ext. A1 is the title document of the 1st Defendant and Exts. A2 is the *ex parte* Order of the Hon'ble Family Court, Kozhikode in IA 843/2019 in OP 781/2019. The title of the 1st Defendant over the plaint schedule property and Ext. A2 is admitted by the 1st Defendant. As PW1 had evaded himself from cross-examination, his oral testimony and Exts. A3 and A4 cannot be considered.
12. The plaint schedule property has been identified as per Exts. C1 and C1(a). It is specifically stated in Ext. C2 that permission was obtained from Unnikulam Grama Panchayat on 18.12.2009. The case of the Plaintiff is that without obtaining permission from Unnikulam Grama Panchayat the 1st Defendant made additional construction in the house situated in the plaint schedule property and also constructed compound wall. The 1st Defendant contended in the written statement that the only objection raised by Unnikulam Grama Panchayat was only regarding the change of nature of the land by RDO, Kozhikode. The permit for construction is also produced from the side of the 1st Defendant in IA 23/2025. in the absence

of unchallenged oral testimony of the Plaintiff, and the contention of the Defendants in their written statements, the Plaintiff had failed to prove that any construction was made in the plaint schedule property in violation of the Building Rules. As the Plaintiff had failed to establish his case, the suit is dismissed.

Issue Nos. 1 and 2 are found against the Plaintiff.

13. **Issue No. 3**

As the Plaintiff had failed to establish his case, the Defendants are entitled to realize the costs of the suit from the Plaintiff.

In the result, the suit is dismissed. Defendant Nos. 1 to 3 are entitled to realize the costs of the suit from the Plaintiff.

(Dictated to Confidential Assistant, typed by her in Office Computer, corrected and pronounced by me in Open Court, on this, the 24th day of September, 2025)

Sd/-
MUNSIFF

Plaintiff's Witnesses:

PW1 : 06.03.2025 : Remesh C.K
PW2 : 08.04.2025 : Binoy Das V.P
PW3 : 08.04.2025 : Shihabudheen.K

Plaintiff's Exhibits:

Ext. A1 : 17.09.2009 : Certified Copy of Assignment Deed
Document No. 1959/2009.
Ext. A2 : 09.07.2019 : Certified Copy of Order IA 843/2019 in
OP 781/2019
Ext. A3 : 02.12.2020 : Lawyer Notice
Ext. A3(a) : 02.12.2020 : Acknowledgment Card

Ext. A3(b) : 02.12.2020 : Acknowledgment Card
 Ext. A3(c) : 02.12.2020 : Acknowledgment Card
 Ext. A3(d) : 02.12.2020 : Acknowledgment Card
 Ext. A3(e) : 02.12.2020 : Acknowledgment Card
 Ext. A3(f) : 02.12.2020 : Postal Receipt
 Ext. A3(g) : 02.12.2020 : Postal Receipt
 Ext. A3(h) : 02.12.2020 : Postal Receipt
 Ext. A3(i) : 02.12.2020 : Postal Receipt
 Ext. A3(j) : 02.12.2020 : Postal Receipt
 Ext. A3(k) : 02.12.2020 : Postal Receipt
 Ext. A3(l) : 02.12.2020 : Postal Receipt
 Ext. A4 : 05.12.2020 : Returned Postal Cover with
 Acknowledgment Card
 Ext. A5 : 15.07.2022 : Reply from Deputy Director of
 Panchayath, Kozhikode.
 Ext. A6 : 25.07.2022 : Reply from Public Information Officer,
 Unnikulam Grama Panchayath

Defendants' Witness/Exhibits: Nil

Court Exhibits:

Ext. C1 : 21.02.2024 : Commission Report
 Ext. C1(a) : 21.02.2024 : Plan
 Ext. C1(b) : 21.02.2024 : Work Memo
 Ext. C1(b)(i) : 21.02.2024 : Sketch
 Ext. C1(b)(ii) : 21.02.2024 : Sketch
 Ext. C1(b)(iii) : 21.02.2024 : Sketch

Sd/-
MUNSIFF

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Fair/ Copy of Order in
OS 03/2021
Dated: 24.09.2025